

General Terms and Conditions for the Provision of WINPACCS

Last updated: 20.05.2023

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Art. 1 Contracting Parties

The mbi GmbH (hereinafter referred to as: "mbi") only enters into contracts with organisations (hereinafter referred to as: "Customer") according to Art. 14 BGB, (German Civil Code).

Unless otherwise agreed, these General Terms and Conditions shall apply exclusively to the provision of "WINPACCS" and pre-contractual obligations relating hereto. Other contractual terms and conditions of the Customer shall not become part of the contract, even if mbi does not expressly object to them.

Art. 2 Subject matter of the contract

- 1) The Subject matter of the contract is the utilisation of the standard software "WINPACCS" on a rental basis. WINPACCS consists of the WINPACCS Cloud web application and the locally installable WINPACCS Accounting and WINPACCS Cashbook applications.
- 2) The current version of the WINPACCS price list applies.
- 3) Diverging arrangements are subject to acceptance in written form. The acceptance of a guarantee for certain properties (composition) are subject to confirmation in written form by mbi.

Art. 3 Contracts and Offers

- 1) Subject to a separate arrangement the contract shall be concluded upon receipt of the order confirmation, at the latest when the service is provided by mbi.
- 2) Delivery dates and deadlines are only mandatory if they have been designated as such by mbi in written form.
- 3) All offers of mbi are non-binding, except if otherwise stated in an offer. mbi reserves the right to perform minor changes for technical reasons, even after the Customer has accepted the offer.

Art. 4 Responsibilities and Obligations of the Customer

- 1) The Customer has the following responsibilities in particular:
 - a) For each direct debit not honoured or returned the Customer is obliged to refund the costs to mbi to the extent of his responsibility of the occurrence.
 - b) After having issued a fault report, the Customer is obliged to refund the costs to mbi for checking their technical installations, if no malfunction in the technical installations of mbi is found and the Customer could have discovered this by reasonable troubleshooting.
 - c) The services provided may not be used abusively, particularly no information containing illicit or immoral contents shall be transmitted or entered into WINPACCS, nor may reference to any such information be made. This includes information that serves as incitement of the people according to Art. 130, 130a and 131 of the German Penal Code (StGB), incites criminal offences, or glorifies or trivialises

violence, is sexually indecent, or is pornographic according to Art. 184 StGB, also information which severely immorally endangers children or young people, or which affects their well-being, and which harms the reputation of mbi. The provisions of the German State Treaty for the Protection of Minors in the Media (Jugendmedienstaatsvertrag) and the German Youth Protection Act (Jugendschutzgesetz) shall be complied with.

The Customer is obliged to observe national and international copyrights, trademark, patent, and name rights, as well as other industrial and personal rights of third parties.

- d) The Customer is obliged to inform its users about the details of this agreement, in particular about the rights and obligations in accordance with the general terms and conditions of business in good time before the start of use. The Customer is liable for all violations of the obligations by its users, and of other third parties, which violate the obligations, and were influenceable by the Customer, insofar as it cannot furnish proof that it cannot be held reliable for this violation.
- e) If the Customer collects, stores, and processes personal data of its users while using WINPACCS, and there is no legal basis for using this personal data, the Customer is obliged to obtain the required consent of the data subject.
- f) The Customer releases mbi and its vicarious agents against all claims of third parties, which are based on an illegal use of WINPACCS, and its services by the Customer, or by others with the Customers consent, or that arise, in particular, from disputes involving data protection, copyright or other legal disputes caused by the Customers use of WINPACCS. If the Customer recognises such a violation of obligations, or if it recognises the danger of such a violation occurring, it is obliged to notify mbi of this violation without delay.
- g) The access data (user ID and password) can be assigned by the Customer themselves and may not be passed on to third parties. It must be protected from access by third parties. The Customer is responsible for the specifications regarding the length and complexity of the passwords and, if applicable, for setting up multi-factor authentication. If there is reason to believe that a third party gained knowledge of the access data, the Customer is obliged to change it immediately.
- h) If mbi is to process sensitive data within WINPACCS according to Art. 9 para. 1 of the General Data Protection Regulation (GDPR), the Customer is to inform mbi of this and the data categories concerned – immediately, and in written form.
- i) The Customer undertakes to check the files it intends to upload into WINPACCS Cloud with a state-of-the-art anti-virus and anti-malware software, before uploading them into the Cloud. The Customer also undertakes to install and maintain a state-of-the-art firewall and an anti-virus software on the PC workstations that are used for WINPACCS. If files belonging to the Customer contain viruses or malware, mbi is permitted to delete those files, if the removal of the viruses or the malware is not possible with reasonable effort.

- j) The Customer undertakes not to impair or interrupt the availability of the servers and networks operated by mbi, or its subcontractors, throughout its use of WINPACCS.
- k) If mbi requires a remote connection to the local PCs of the Customer, for instance via TeamViewer, for providing repairs and maintenance, the Customer will perform any required collaborative action as directed by mbi in order to allow mbi to perform the remote maintenance, in particular installing the software TeamViewer.
- 2) mbi has the right, in the event of serious violations of the obligations incumbent on the Customer, as well as if there are substantial grounds for suspecting a breach of contract against Art. 4 para. 1, to bar the access to the software as a service at the Customer's expense.
- 3) The Customer is obliged and responsible for backing up its local data which is stored on its computers while using WINPACCS.
- 4) The Customer undertakes to install updates provided by mbi within six months after their release. The Customer is hereby notified that the full functionality of WINPACCS can only be guaranteed by installing the latest updates. mbi reserves the right to discontinue the Support as mentioned in Art. 12 for older versions of the WINPACCS applications.

Art. 5 Rights of Use

- 1) The Customer and its personally named users will be granted the non-exclusive right to access, for the duration of usage, i.e., the duration of this contract, the software functionalities which are assigned to the respective user roles. Per user account, only one user can be named personally to whom the respective usage rights are assigned. The Customer does not receive further rights. In particular, use is only permitted by the person assigned to the user account. A transfer of the right of use to another user of the account is only permitted with the consent of mbi.
- 2) The Customer is not entitled to use the software beyond the usage permitted within the framework of this contract. The Customer is allowed, at his expense, to grant user roles registered with mbi to external partners, after express consent of mbi has been given. Furthermore, the Customer is not permitted to make WINPACCS available to third parties, or to provide access to it to any third parties. In particular, the Customer does not have the right to decompile, reproduce, sell, or offer access to the source code, or parts of it, to third parties. The functions and any graphical illustrations of WINPACCS may not be used for the Customer's own purposes, especially not within other software of the Customer or of associated companies. It is expressly forbidden to use WINPACCS in order to develop similar software. If required by mbi, the Customer is obliged, without delay, to provide any details and information required for asserting claims against third parties, including their name and address, as well as type and scope of the claim against the third-party debtor arising from the unauthorised use of the software.
- 3) The use of WINPACCS is forbidden for competitors of mbi, as well as associated firms of competitors of mbi.

- 4) The Customer is obliged to pay the prices for services that arise and are incurred for the users they have set up and authorised. The same applies if unauthorised use by third parties occurs, if and as far as the Customer is responsible for such use.
- 5) For WINPACCS Accounting and WINPACCS Cashbook the following applies: the Customer is only allowed to install the modules a maximum of twice as many times as the amount of user roles with write permission are registered for the corresponding modules.
- 6) Additional deployment environments may only be used for the specified purpose (e.g., training, testing) and not for productive use. mbi is not obliged to back up any data for additional deployment environments.

Art. 6 Fees

- 1) Fees and ancillary costs are in principle net remunerations plus statutory taxes and duties.
- 2) The invoice amount must be paid to the account specified in the invoice. It must be credited not later than 14 days after the invoice has been received. If the Customer allows mbi to use direct debit, mbi will not debit the amount on the invoice from the specified account until the seventh day after the invoice has been received.
- 3) Other charges shall be payable after the relevant service has been performed.
- 4) The Customer shall only be entitled to a right of set-off, if his counterclaim is legally binding or undisputed. The Customer shall only be entitled to assert a right of retention due to counterclaims arising from this contractual relationship.

Art. 7 Default

- 1) If the Customer
 - a) defaults on payment of the amount owed for three consecutive months, or
 - b) defaults on payment that amounts to the monthly subscription for three months, during a period that extends over more than three months, mbi shall have the right to terminate the agreement without notice and cease the services at the expense of the Customer.
- 2) mbi reserves the right to assert further claims regarding default of payment.

Art. 8 Reservation of Right of Modification

- 1) mbi reserves the right to change the form and nature of the provided services in an acceptable manner. The change is acceptable, if:
 - a) new legal or regulatory requirements render a change necessary,
 - b) the agreed services are no longer state-of-the-art, or comply to security regulations or data protection law, or if their operability can no longer be guaranteed,
 - c) or if the services are replaced, in whole or in part, by equivalent or enhanced services, the amount of service provided will remain essentially the same, and the change of service is reasonable.

The Customer will be informed of the change to the service in a timely manner.

- 2) mbi reserves the right to change or supplement its conditions (particularly prices and the general terms and conditions). In such a case, mbi will inform the Customer of those changes and/or additions one month in advance. Those changes and addendums will only be applicable if the Customer, after having been informed, continues to use WINPACCS after the next possible option to terminate the contract, and it has been informed of these consequences. This procedure applies mutatis mutandis for free of charge services.

Art. 9 Liability

- 1) mbi shall be liable for all damage arising from wilful intent, gross negligence, or due to the lack of a guaranteed characteristic.
- 2) In the event of mild negligence mbi shall be liable for all damage resulting from injury to life, limb, or health of another. Furthermore, concerning mild negligence, mbi shall only be liable if an obligation is violated, whose fulfilment is necessary in order to accomplish the contract, whose violation endangers the purpose of the contract and on whose observance the Customer may duly rely (major obligation). If a cardinal obligation is violated, the liability is limited to foreseeable damage typical of the contract concerned. This also applies to liability for lost profits and savings that failed to materialise. Liability for other distant consequential harm caused by a defect is excluded.
- 3) The strict liability of mbi for damages (Art. 536 lit. a BGB) for defects existing at the time the contract is signed is excluded.
- 4) Liability for all other damage is excluded, including liability for lost data or hardware defects arising due to incompatibility of the existing components on the PC system of the Customer with the new or in use hard- and software, and for system faults which may arise due to misconfigurations or older, interfering, not completely deleted drivers.
- 5) Liability due to regulations of the German Product Liability Act (Produkthaftungsgesetz) remain unaffected.

Art. 10 General Warranty for Material Defects

- 1) mbi provides a warranty that the service provided exhibits the agreed condition and the Customer is able to use WINPACCS without infringement of third-party rights. The warranty against material defects does not apply to defects or damages arising from using WINPACCS in a hard- and software environment which does not meet the requirements stated in the software description, or for changes and modifications to the software made by the Customer without having the right to do so via law, this contract or due to prior written consent of mbi.
- 2) After having been granted access to WINPACCS, the Customer is obliged to check the product for apparent defects and inform mbi in a timely manner if such a defect is detected; if such information is not provided, mbi cannot be held liable for this defect. The same applies, if such a defect becomes apparent later. Art. 377 German Commercial Code (HGB) shall apply. The notice of defect must be given in such a manner that mbi is able to detect the defect based on the information given by the Customer. The information must contain all the reasonable data concerning the type of defect, the module, in which the defect occurred, and the work which was performed when the defect occurred.
- 3) In case of a material defect, mbi is initially entitled to rectify the defect, meaning remedial or replacement of their own choice. The replacement delivery can take the form of a new programme version, which the Customer will accept, provided that this does not lead to unreasonable effort for the Customer. Likewise, mbi may show the Customer reasonable possibilities to avoid the effects of the defect. In the event of legal defects, mbi will provide the Customer a legally sound possibility to use the software or will change the software in such a manner that no rights of third parties are infringed.
- 4) mbi has the right to perform the rectification on the Customer's premises. mbi may also fulfil its obligation to remedy the defect by providing updates with an automatic installation routine on its website for downloading purposes and providing the Customer support by telephone to solve problems, for instance occurring due to installation problems.
- 5) The right of the Customer to reduce the price, or to withdraw from the contract at its discretion in the event that the repair or replacement delivery fails twice, remains unaffected. The right to withdraw from the contract does not exist for insignificant defects. If the Customer demands compensation or reimbursement of futile expenditure, mbi shall be held liable according to Art. 9.
- 6) With the exception of claims for damages, warranty claims based on material defects are subject to a limitation period of one year. In the event of transfer on a data carrier, the limitation period shall commence with the delivery of WINPACCS on the data carrier. If WINPACCS is provided via a download link, the limitation period starts after the information about availability has been sent, and the software has been provided in the download area.

Art. 11 Software Availability and Warranty for Material Defects of “WINPACCS Cloud”

- 1) mbi provides access to the “WINPACCS Cloud” software to the extent agreed, including its functions and storage space for the data generated through usage by the Customer, and/or the data required to use the software from the contractually agreed date onwards.
- 2) mbi strives for 99% availability of the WINPACCS Cloud software per year. In this context, availability means the technical usability of the software, and the data provided by the software at the transfer point for usage by the Customer. Excluded from this are interruptions caused by routine and planned necessary maintenance and repair work. Insofar as possible, mbi shall inform the Customer of these interruptions in a timely manner. However, no guarantee will be provided for this.
- 3) The Customer is obliged to inform mbi without delay of any interruptions to the services which are not a result of planned necessary maintenance. mbi shall commence fault rectification after having been informed by the Customer, or after having received an automatic error message from the server, or the system installed at mbi and will inform the Customer of doing so (response time). mbi will ensure that communicated or discovered technical defects will be remedied in an acceptable amount of time (recovery time). Response time and recovery time are based on the so-called disruption categories. These are determined as follows:

a) Disruption category I:

Faults, which do not affect the usage of “WINPACCS Cloud” or only to a minor degree.

b) Disruption category II:

Faults, which affect the usage of “WINPACCS Cloud” more than only to a minor degree, but the usage of WINPACCS is still possible.

c) Disruption category III:

Faults which affect the usage of “WINPACCS Cloud” considerably or render it impossible to use.

The following response and recovery times are agreed upon:

Disruption category	Response time	Recovery time
I	Once per year	Once per year
II	One week	Two weeks
III	24 hours	48 hours

- 4) The Customer is responsible for maintaining its own Internet connection.
- 5) Unless otherwise agreed upon in this section for "WINPACCS Cloud", the general conditions according to Art. 10 shall apply.

Art. 12 Support Services

- 1) Employees of mbi will provide support via telephone for the Customer for the duration of the contract in German and English from Monday to Friday, 9 am until 5 pm (CET) with the exception of German national public holidays.
- 2) The Customer may also submit questions about WINPACCS in written form in German, English, French and Spanish via fax or email.
- 3) mbi shall commence processing the support request on the same working day if the request is received before 12 midday (CET), if the support request is received after 12 midday (CET) no later than the next working day. Working days are defined as Monday to Friday with the exception of German national public holidays.
- 4) The number of support hours included in the monthly basic fee is specified in the respective current price list. Every additional support request is to be paid for according to the hourly rate of the price list in effect at the time the support is performed. mbi shall bill the support requests on a monthly basis and at quarter of an hour intervals.

Art. 13 Communication

Communication about contract-related content takes place via the e-mail addresses of the coordinators reported by the customer. This applies in particular to the transmission of information regarding requested or existing contracts as well as to information about upcoming maintenance, malfunctions or functional enhancements. In addition, mbi may offer users via e-mail to participate in voluntary user surveys regarding satisfaction with WINPACCS. The Customer will check the provided e-mail addresses for incoming emails in a manner that is customary to business and inform mbi of a change in email address without delay.

Art. 14 Data Protection

- 1) In order to regulate the data protection implications of the provision of WINPACCS, an Order processing agreement shall be concluded which complies with the requirements of Art. 28 GDPR.
- 2) The hosting of the data entered by the Customer into WINPACCS takes place exclusively on servers located in the European Union.
- 3) For the purpose of executing the contract, particularly the billing of the provided services and the creation of anonymised statistics, mbi reserves the right, to the extent necessary, to monitor data concerning the usage behaviour and usage scope of the Customer and its registered users, and to process the necessary personal data.

Art. 15 Force majeure

- 1) mbi shall not be held liable for events of force majeure which significantly hinder mbi to provide its service in an orderly manner, in part or in total. A reduction or a reclaim of the agreed remuneration is excluded. Force majeure shall be deemed to be all circumstances independent of the will and influence of the contractual parties such as natural disasters, government measures, decisions of government agencies,

blockades, war and other military conflicts, mobilisation, civil unrest, terrorist attacks, pandemics, strikes, lockouts and other industrial unrest, confiscation, embargoes and other unforeseeable, serious conditions which are not the fault of the parties, and which arise after conclusion of this agreement.

- 2) If a party is hindered to fulfil its contractual obligation by force majeure it is not counted as a violation of contract and the determined time limits set in the contract are extended in relation to the hindrance. The same applies to force majeure of third parties on whose prior performance mbi relies.
- 3) Each party shall do all that is necessary and reasonable within its power to reduce the extent of the consequences arising from force majeure. The party affected by force majeure shall notify the other party in written form without delay about the beginning and the end of the hindrance.
- 4) If it is certain that the force majeure will last longer than six months, each party has the right to terminate the contract via registered letter.

Art. 16 Contract Period and Termination

- 1) The contract period and notice periods are based on the specifications in the current applicable price list.
- 2) The right to terminate the contract on substantial grounds remains unaffected. Substantial grounds for terminating the contract by mbi exist particularly in the cases, in which the Customer considerably violates the obligations incumbent upon them.
- 3) With the termination of the contract concerning the use of WINPACCS, each and every other contract concerning additional services relying on the use of WINPACCS is also terminated.
- 4) Use of the provided software shall be blocked when the contract ends. The Customer's entire data saved on the platform's servers is to be downloaded by the Customer to their local system before the day the contract terminates. For this reason, mbi offers the Customer the chance to export or save the data on a physical drive in an interoperable format if the Customer so wishes. The remuneration for this shall be in accordance with the remuneration for support services pursuant to Art. 12. mbi shall irretrievably delete the data and access identifiers one month after expiry of the contract term, unless the Customer separately orders the WINPACCS Cloud Archive offered by mbi for the period after expiry of the contract.
- 5) Upon termination of the contract, the Customer is obliged to wholly delete any locally installed software modules provided by mbi. The same applies to any backups created by the modules.

Art. 17 Other Conditions

- 1) The place of jurisdiction for all disputes arising from and in relation to this contract is Wetzlar. An exclusive place of jurisdiction shall take priority.
- 2) The Customer is only allowed to assign its rights and duties resulting from this contract to a third party after obtaining written consent by mbi.
- 3) The contractual relationship between the parties to this contract shall be governed by German law, to the exclusion of the United Nations' Convention on Contracts for the International Sale of Goods.